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December 1, 2004  
TN REGULATORY AUTHORITY  
DOCKET BOOK

Hon. Pat Miller, Chairman  
Tennessee Regulatory Authority  
460 James Robertson Parkway  
Nashville, Tennessee 37243

Re *Application for Approval of the Transfer of Control of Cypress  
Communications Operating Company, Inc. from Cypress Communications  
Holding Co., Inc. to TechInvest Holding Company, Inc.*  
Docket No. 04-00417


Dear Chairman Miller:

Enclosed please find the original and fourteen (14) copies of the above Application For Transfer of Control. Also enclosed is a check in the amount of \$25.00.

If you have any questions, please do not hesitate to contact me.

Very truly yours,

BOULT, CUMMINGS, CONNERS & BERRY, PLC

By:   
Henry Walker K6

HW/krq

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106022-001 12/1/2004

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**December 1, 2004**

Docket No.

- 1 -

provide telecommunications services in Tennessee and will continue to provide service to its existing customers in the same manner as it does today. The end result to Cypress Operating on a day-to-day management basis will be that it is stronger financially and, therefore, better able to serve its current customers and compete for new customers.

In support of this Application, the Applicants provide the following information:

**I. DESCRIPTION OF THE RELEVANT PARTIES**

**A. Cypress Operating**

Cypress Operating is a corporation organized and existing under the laws of Delaware with its principal place of business located at 15 Piedmont Center, 3575 Piedmont Road, Suite 100, Atlanta, Georgia 30305. Cypress Operating is a wholly-owned subsidiary of Cypress Communications, which in turn is a wholly-owned subsidiary of Cypress Holding. Cypress Holding is a publicly-traded corporation organized under the laws of Delaware with the same principal place of business as Cypress Operating. While several of the existing shareholders in Cypress Holding hold a 10 percent or greater equity interest in the company, no shareholder or group of shareholders controls Cypress.

Cypress is a provider of bundled telecommunications services to small and medium-sized businesses located in multi-tenant commercial office buildings in major metropolitan markets in the U.S.<sup>2</sup> Specifically, Cypress offers its customers integrated service bundles that include local, long distance, and international telecommunications services; high-speed Internet connectivity;

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<sup>2</sup> Cypress currently provides service in the following markets: Atlanta, Birmingham, Boston, Chicago, Dallas, Denver, Hartford, Houston, Indianapolis, Miami, Minneapolis, Nashville, New Orleans, New Jersey, New York, Orlando, Philadelphia, Phoenix, Pittsburgh, Portland, San Francisco, Seattle, Southern California (Los Angeles and Orange County), Tampa, and Washington, D.C.

e-mail services; fully-managed firewall services; web hosting; virtual private networks; feature-rich digital desktop stations; calling cards; audio and web conferencing; and digital business television. Cypress delivers these services over in-building networks that it owns and operates. However, Cypress does not own or operate any switches or transmission facilities outside of the multi-tenant buildings in which its customers are located. Rather, Cypress obtains external transmission facilities and other network elements and telecommunications services from other carriers to connect its customers to the Internet and the public switched network. In other words, Cypress's regulated telecommunications services are provided entirely on a resale basis using facilities and switches that are owned and operated by other telecommunications carriers.

Certain Cypress companies are certificated or otherwise authorized to provide local exchange telecommunications services and/or intrastate interexchange services in 33 states, including in Tennessee. In Tennessee, Cypress Operating received its authority to provide resold and facilities-based local and interexchange telecommunications services in Docket No. 03-00316 on October 1, 2003. Cypress Operating provides domestic and international telecommunications services pursuant to authorizations granted by the Federal Communications Commission ("FCC").

## **B. THC**

THC is a newly formed Delaware corporation established to effect the purchase of Cypress Holding. THC is an indirect subsidiary of First Islamic Investment Bank, E.C. ("FIIB"). The acquisition of Cypress was identified, structured, and executed by Crescent Capital Investments, Inc. ("Crescent"), a Delaware corporation with its headquarters in Atlanta, Georgia and an indirect, wholly-owned U.S. subsidiary of FIIB. FIIB and Crescent are discussed in detail below.

*FIIB.* FIIB is a joint stock company organized under the laws of Bahrain. Founded in 1996, FIIB is headquartered in Bahrain with U.S. and U.K. subsidiary offices in Atlanta and London. The mission of FIIB is to provide innovative and distinctive investment opportunities that generate superior risk-adjusted returns for its shareholders and investors. FIIB has a paid-in share capital of approximately \$154 million and operates under an investment banking license granted by the Bahrain Monetary Agency. In the U.S., FIIB operates through Crescent and currently has a corporate investment portfolio that consists of ten U.S. companies in various sectors including manufacturing, services, and technology. While one shareholder holds approximately 10.5 percent of the ownership of FIIB, and the employees of FIIB and Crescent collectively hold approximately 11 percent of the ownership interests, no shareholder or group of shareholders holds a controlling interest in FIIB, and there are no voting or other agreements that would give control to one shareholder or group of shareholders.<sup>3</sup>

*Crescent.* Crescent is a Delaware corporation based in Atlanta, Georgia. Crescent is principally engaged in identifying and structuring investments for the benefit of its parent company, FIIB, and clients of FIIB. Crescent identifies, structures and advises FIIB and its co-investors with respect to investments in operating companies, real estate, and asset-based transactions, and provides management and strategic advice to such operating companies and joint venture vehicles. Recent U.S. investments include Loehmann's Holdings, Inc. (high-end discount retailing), Caribou Coffee Company, Inc. (specialty retailing), Cirrus Industries, Inc. (aerospace manufacturing), American Pad & Paper LLC (manufacturing of paper-based office

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<sup>3</sup> Moreover, because of the proposed post-close ownership structure described below, no FIIB shareholder or group of shareholders will have a 10 percent or greater equity or voting interest in Cypress.

products), MediFax-EDI, Inc (healthcare claims processing) and Smart Documents Solutions, LLC (medical records processing).

## **II. DESIGNATED CONTACTS**

The designated contact for questions concerning this Application is:

Henry Walker, Esq.  
Boult Cummings Conners Berry, PLC  
1600 Division Street, Suite 700  
P.O. Box 340025  
Nashville, Tennessee 37203

Copies of all correspondence, notices, orders and inquiries relating to this application, as well as in the future, should also be sent to:

<b>For Cypress:</b>	<b>For THC:</b>
Gregory P. McGraw President and Chief Executive Officer Cypress Communications Holding Co. Inc. 15 Piedmont Center, Suite 100 3575 Piedmont Road Atlanta, GA 30305 Tel: 404-869-2500 Fax: 404-442-0343 gmcgraw@cypresscom.net	Charles H. Ogburn President TechInvest Holding Company, Inc. c/o Crescent Capital Investments, Inc. 75 Fourteenth St., 24 <sup>th</sup> Floor Atlanta, GA 30309 Tel: 404-920-9000 Fax: 404-920-9001 cogburn@crescentcapital.com
Kathy L. Cooper Brian M. McDermott Swidler Berlin Shereff Friedman, LLP 3000 K Street, NW, Suite 300 Washington, DC 20007-5116 Tel: 202-424-7500 Fax: 202-424-7643 KLCooper@swidlaw.com BMMcDermott@swidlaw.com	Melissa Conway Kelley Drye & Warren LLP 1200-19 <sup>th</sup> Street, N.W. Suite 500 Washington, D.C. 20036 Tel: (202) 955-9667 Fax: 202-955-9792 mconway@kelleydrye.com

### **III. DESCRIPTION OF THE TRANSACTIONS PROPOSED**

On November 5, 2004, TechInvest Acquisition, Inc. ("Merger Corporation"), THC and Cypress Holding entered into an Agreement and Plan of Merger (the "Merger Agreement"). Merger Corporation is a newly formed Delaware corporation and wholly-owned subsidiary of THC that was incorporated for the sole purpose of entering into the Merger Agreement and consummating the transactions contemplated thereby.

Pursuant to the Merger Agreement, Merger Corporation will merge with and into Cypress Holding, with Cypress Holding being the surviving corporation and becoming a direct, wholly-owned subsidiary of THC. Organization charts showing the ownership of Cypress Operating both before and after the proposed transaction is consummated are provided in Exhibit A. The Merger Agreement provides that the existing shareholders of Cypress Holding are entitled to receive in cash an amount equal to \$39,350,000, subject to adjustment for changes in working capital prior to closing and after repayment of certain indebtedness of Cypress Holding, for all of the outstanding capital stock of Cypress Holding. The closing of the transaction is contingent on receipt of necessary regulatory approvals and the approval of the shareholders of Cypress Holding, among other things. On November 12, 2004, the Applicants filed an application with the FCC, seeking approval of the transaction with respect to Cypress's domestic interstate and international telecommunications services.

The post-close ownership structure of Cypress is described below, and an organization chart for Cypress post-close is provided in Exhibit A. While the ultimate ownership structure is complex, the bottom line is that Cypress will become a direct, wholly-owned subsidiary of THC, and the ownership structure of THC will result in no person holding interests that would be sufficient to constitute a 10 percent or greater equity or voting interest in Cypress post-close or

confer the ability to control Cypress.

**A. Post-Close Equity Ownership of Cypress**

After closing, FIIB expects to finance the merger in part through funds raised in an offering of shares in offshore investment companies ("Shares Offering"). In connection with this Shares Offering, THC will issue 18.99 percent of its non-voting common stock to each of four (4) Cayman Islands entities, all companies limited by shares – TechAccess Capital Limited, TechShield Capital Limited, TechNet Capital Limited, and TechTV Capital Limited (collectively, the "Non-Voting Cayman Entities"). After closing, interests in these Cayman Islands entities will be sold through a Shares Offering to non-U.S. persons. Shareholders of FIIB, other than employees of FIIB and Crescent, will be eligible to purchase and hold these shares. However, no investor in the Non-Voting Cayman Entities will be allowed to hold an ownership interest in the Non-Voting Cayman Entities that, separately or combined with the investor's interest in FIIB, would be sufficient to constitute a 10 percent or greater equity interest in Cypress post-close.

Financing for the merger will also be provided in part through a Shares Offering to FIIP Limited ("FIIP"), a Cayman Islands company limited by shares. FIIP is the corporate vehicle for participation in THC by FIIB and Crescent employees. THC will issue 3.28 percent of its non-voting common stock to FIIP. No employee of FIIB or Crescent will be allowed to hold an ownership interest in FIIP that, separately or combined with the employee's interest in FIIB, would be sufficient to constitute a 10 percent or greater ownership interest in Cypress post-close or confer the ability to control Cypress.

After the financing arrangements with the Non-Voting Cayman Entities and FIIP are complete, FIIB will retain no more than 18.76 percent of the non-voting stock in THC through a



wholly-owned indirect subsidiary, TechInvest Holdings Limited ("THL"), a Cayman Islands company limited by shares.

**B. Post-Close Voting Interests in Cypress**

All of the voting stock of THC will be held by 15 Cayman Island entities, each a company limited by shares (collectively, the "Voting Cayman Entities").<sup>4</sup> The ownership of the voting stock will be divided equally between these companies. Accordingly, each Voting Cayman Entity will individually hold approximately 6.67 percent of the voting interest in THC. In total, the voting stock of THC will represent 2 percent of the aggregate equity value of THC. As such, none of the Voting Cayman Entities will hold a 10 percent or greater equity or voting interest in Cypress post-close.

The ownership interest in the Voting Cayman Entities will be held by approximately 50 international investors (the "International Investors"). Each International Investor has granted a revocable proxy to First Islamic Investment Management Limited ("FIIM"), a wholly-owned indirect subsidiary of FIIB, to vote the investor's shares on all matters. In addition, each Voting Cayman Entity has entered into an administrative agreement with FIIM pursuant to which FIIM will be authorized to vote the voting stock of THC and make all major decisions on behalf of the Voting Cayman Entities.

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<sup>4</sup> These companies are Amity Investment III Limited; Brace Investment III Limited; Coalition Investment III Limited; Enable Investment III Limited; Federation Investment III Limited; Group Investment III Limited; League Investment III Limited; Order Investment III Limited; Patron Investment III Limited; Society Investment III Limited; Tutor Investment III Limited; Joint Investment III Limited; Matrix Investment III Limited; United Investment III Limited; and Yield Investment III Limited.

#### **IV. QUALIFICATIONS OF THC**

Cypress Operating, backed by its ultimate parent company Cypress Holding, will continue to possess the managerial and technical qualifications to provide telecommunications services in Tennessee. THC currently plans to retain the majority of Cypress' current management team and will rely on its experienced professionals. It is thus not contemplated that there will be significant changes in Cypress' current management occasioned by this transaction, and the current senior management is expected to continue to oversee the day-to-day operations of its operating subsidiaries. Of course, over time, there may be management changes as deemed appropriate by THC's Board of Directors.

Similarly, Cypress Operating will continue to possess the financial qualifications to provide telecommunications services in Tennessee. THC will bring an infusion of new capital to Cypress and thus better equip Cypress to provide quality telecommunications services to its customers.

#### **V. PUBLIC INTEREST ANALYSIS**

The transfer of control of Cypress to THC pursuant to the Merger Agreement will serve the public interest. THC will supplement Cypress' current management, the majority of whom will be retained post-close, and will bring additional capital to Cypress. In so doing, THC will strengthen Cypress and better ensure that it remains a viable long-term competitor in the telecommunications marketplace. Given the difficulties with which the competitive telecommunications industry is now struggling, the creation of a financially stronger telecommunications competitor would benefit consumers in Tennessee.

At the same time, the change in ultimate ownership of Cypress will not have any adverse impact on customers. Since this is a stock transaction as opposed to an asset sale, the transfer of

control of Cypress will not result in a change of carrier for Cypress' customers or any transfer of authorizations. Immediately following consummation of the transaction, Cypress will continue to provide high-quality communications services to its customers without interruption and without immediate change in rates, terms or conditions. The contact for customers and Authority inquiries will continue to be Deena Snipes, Director – Legal and Business Affairs, Cypress Communications, 15 Piedmont Center, Suite 100, 3575 Piedmont Road, Atlanta, GA 30305, (404) 442-0169. In fact, the operations of Cypress will largely continue to be determined by many of the same management, technical, and customer service personnel that currently oversee those operations.

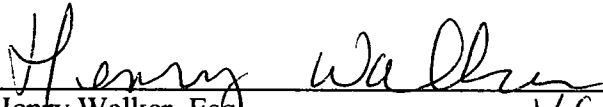
Finally, no anticompetitive effects will result from the grant of this Application. Since neither THC nor any of its affiliates is presently a participant in the telecommunications market, no competitors will be eliminated as a result of the proposed transaction.

## **VI. CONCLUSION**

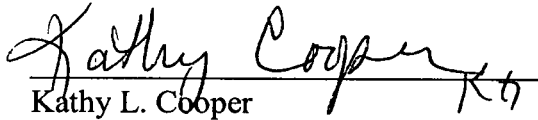
WHEREFORE, the Applicants respectfully request that the Authority approve the transfer of control described herein, and grant such further relief as it deems necessary to carry out the transactions described above.

Respectfully submitted,

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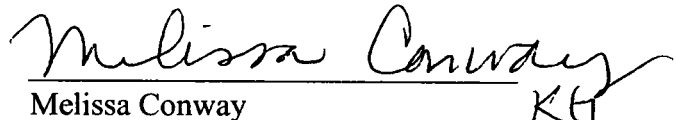
**CYPRESS COMMUNICATIONS  
HOLDING CO., INC. and  
CYPRESS COMMUNICATIONS  
OPERATING CO., INC.**

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Its Attorneys

**TECHINVEST HOLDING  
COMPANY, INC.**

 Melissa Conway

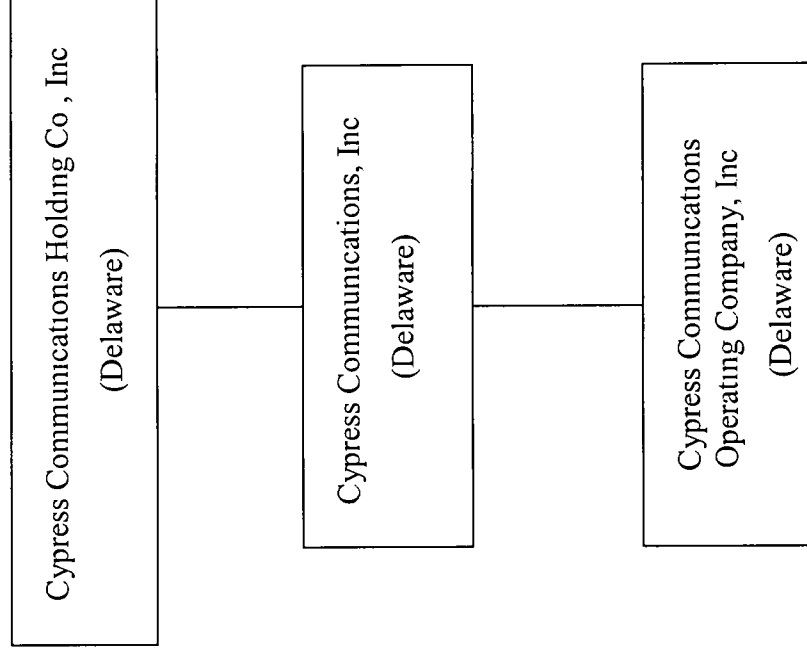
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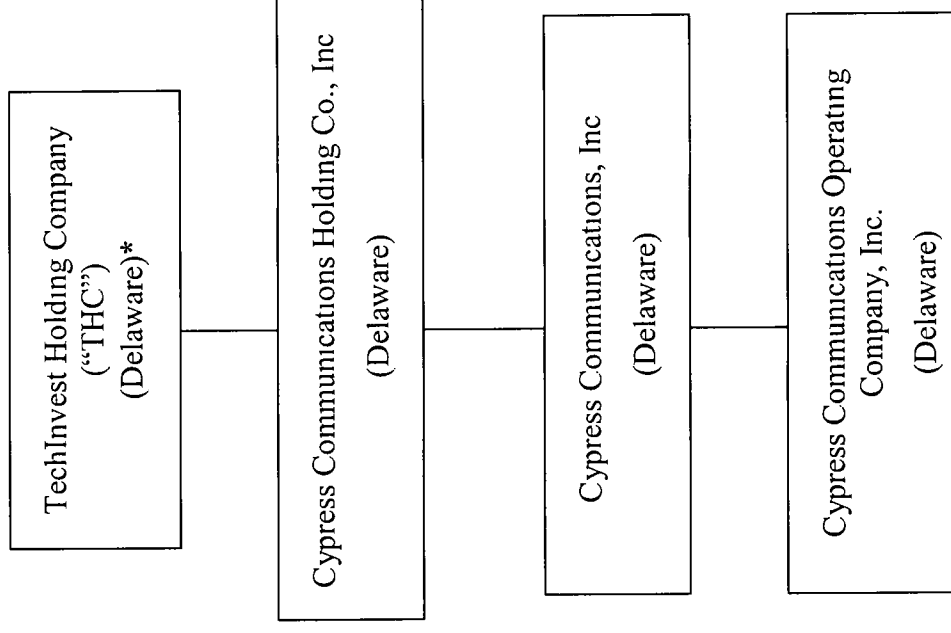
Its Attorneys

# **EXHIBIT A**

**OWNERSHIP STRUCTURE OF CYPRESS COMMUNICATIONS OPERATING COMPANY, INC. BEFORE CLOSING**



OWNERSHIP STRUCTURE OF CYPRESS COMMUNICATIONS OPERATING COMPANY, INC. AT CLOSING



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\* The post-close ownership structure of THC is described in Section III of the Application

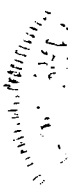
## VERIFICATION


I, Gregory P. McGraw, am President and Chief Executive Officer of Cypress Communications Holding Company, Inc., and am authorized to represent it and its affiliates, and to make this verification on their behalf. The statements in the foregoing document relating to this company and its affiliates, except as otherwise specifically attributed, are true and correct to the best of my knowledge and belief.

I declare under penalty of perjury that the foregoing is true and correct.



Subscribed and sworn to before me this 15th day of  
November, 2004.



  
Notary Public

Janice Micetic  
Notary Public, DeKalb County, Georgia  
My Commission Expires May 30, 2006

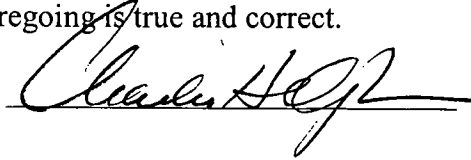
My Commission expires: \_\_\_\_\_



## VERIFICATION

I, Charles H. Ogburn, am President of TechInvest Holding Company, Inc., and am authorized to represent it and its affiliates, and to make this verification on their behalf. The statements in the foregoing document relating to this company and its affiliates, except as otherwise specifically attributed, are true and correct to the best of my knowledge and belief.

I declare under penalty of perjury that the foregoing is true and correct.



Subscribed and sworn to before me this 15<sup>th</sup> day of November, 2004.

  
Notary Public

STEPHANIE L. WHITFIELD  
NOTARY PUBLIC, FULTON COUNTY, GEORGIA  
MY COMMISSION EXPIRES JULY 29, 2006

My Commission expires: \_\_\_\_\_